

## **V. SUMMARY OF LAWS GUIDING PARK MANAGEMENT**

There are many federal and state statutes, state and federal executive orders, and administrative rules and policies that govern the operation of the state parks system. This chapter includes a brief discussion of the primary legal basis for the existence and operation of the state parks system. It also includes other legal issues of particular concern at Carolina Beach State Park.

### **STATE LEGAL MANDATES**

#### **North Carolina Constitution**

Article XIV, Section 5 of the North Carolina Constitution sets overall policy by broadly defining the conservation and protection of natural resources and the acquisition of such resources as a proper function of government. The amendment reads in part as follows:

*It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivision to acquire and preserve park, recreation, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open land, and places of beauty.*

#### **State Parks Act**

The State Parks Act (G.S. 113-44.7 through 113-44.14) sets forth a mission statement for the state parks system. It states that the system functions to preserve and manage representative examples of significant biological, geological, scenic, archaeological, and recreational resources, and that park lands are to be used by the people of the state and their visitors and descendants in order to promote understanding of and pride in the state's natural heritage.

The State Parks Act also calls for development and periodic revisions of a system plan to achieve the mission and purpose of the state parks system in a reasonable, timely, and cost-efficient manner. The Act describes the System Plan components and requires that public participation be a component of plan development and revisions.

The State Parks Act also calls for the classification of park resources and development of general management plans (GMPs) for each park. GMPs are to include a statement of park purpose, an analysis of major resources and facilities, and a statement of management direction.

## **Powers and Duties of the Department of Environment and Natural Resources**

The Department is authorized to make investigations of the resources of the state and to take such measures as it may deem best suited to promote the conservation and development of such resources. In addition, the Department may care for state forests and parks and other recreational areas now owned, or to be acquired by, the state (G.S. 113-8).

## **State Nature and Historic Preserve Dedication Act**

Article 14, Section 5 of the North Carolina Constitution authorized the State Nature and Historic Preserve Dedication Act (G.S. 143-260.6). The Act seeks to ensure that lands and waters acquired and preserved for park, recreational, and scenic areas - for the purpose of controlling and limiting the pollution of air and water, controlling excessive noise, and in every other appropriate way preserving as a part of the common heritage of the state - continue to be used for those purposes. The State Nature and Historic Preserve Act provides a strong legal tool for protecting lands from incompatible uses. The addition and removal of lands to and from the State Nature and Historic Preserve requires a vote of three-fifths of the members of each house of the General Assembly. All state-owned land and water within Carolina Beach State Park's boundaries as of May 6, 2003, are protected by the State Nature and Historic Preserve Dedication Act.

## **Nature Preserves Act**

The Nature Preserves Act (1985, G.S. 113A-164) prescribes methods by which nature preserves may be dedicated for the benefit of present and future citizens of North Carolina. It authorizes a Natural Heritage Program to provide assistance in the selection and nomination for registration or dedication of natural areas.

The state may accept the dedication of outstanding natural areas by gift, grant, or purchase of fee simple title or other interest in land. Lands dedicated are held in trust by the state and are managed and protected according to regulations. They may not be used for any purpose inconsistent with the provision of the Nature Preserves Act or disposed of by the state without a finding by the Governor and Council of State that the other use or disposition is in the best interest of the state. Registered areas lack the long-term protection afforded to those areas that are dedicated.

The Carolina Beach State Park Registered Natural Heritage Area contains 280 acres and was registered in May of 1980. Ninety acres are state-owned and 190 are leased acres. Developed areas within the park - including the park's marina, camping area, visitor's center and maintenance area - are excluded from the registered natural area.

## **North Carolina Environmental Policy Act of 1971**

Recognizing the profound influence that human activity has on the natural environment, the General Assembly passed the Environmental Policy Act *"to assure that an environment of high quality will be maintained for the health and well-being of all..."*

The Act declares that:

*It shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all its citizens safe, healthful, productive, and aesthetically pleasing surroundings; to attain the widest possible range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance. (G.S. 113A-3)*

### **Archaeological Resources Protection Act**

The Carolina Beach State Park area is known to have been occupied by American Indian tribes. The area also contains some cultural resources associated with early settlements. Unknown archaeological resources may also exist, both within the existing park boundaries and in nearby areas. Development of recreational facilities should avoid destruction of these resources.

A permit is required from the Department of Administration, in consultation with the Department of Cultural Resources, to excavate, remove, damage, or alter any archaeological resource on state lands. Archaeological resources are defined as the remains of past human life or activities that are at least 50 years old and are of archaeological interest (G.S. 70-10).

While there are other General Statutes that concern the state parks system and the environment, the above-described statutes, along with Article XIV, Section 5, of the North Carolina Constitution, largely define the purposes of the state parks system and serve to guide the operation of state park system units.

## **FEDERAL LAWS**

### **Land and Water Conservation Fund Act of 1965**

The federal Land and Water Conservation Fund Act (PL 88-578) offers protection and places restrictions on fund-assisted outdoor recreation areas. By virtue of receiving Land and Water Conservation Fund (LWCF) grant assistance, most of the state parks system, including Carolina Beach State Park, is subject to LWCF rules and regulations. Carolina Beach State Park has received two LWCF grants, one in 1972 and one in 1986 (LWCF #37-00270 and 37-00890). The state park land as of the time of the last grant application is subject to LWCF rules and regulations.

Property acquired or developed in whole or in part with LWCF assistance cannot be converted to other than public outdoor recreation use without federal approval. A conversion may take place only if approved by the Secretary of the Interior, and only then if replacement property of equal fair market value and reasonably equivalent usefulness and location is made.

LWCF requirements include: programming, operating and maintaining areas in a manner that

encourages public participation; maintaining the property so it appears attractive and inviting to the public; maintaining property, facilities and equipment to provide for public safety; keeping facilities, roads, trails and other improvements in reasonable repair throughout their lifetime to prevent undue deterioration and encourage public use; keeping the park and facilities open for use at reasonable hours and times; and making future development meet LWCF rules and regulations. LWCF-assisted sites are periodically inspected by state and federal inspectors to ensure compliance with LWCF requirements.

### **The Americans With Disabilities Act**

Title II of the ADA prohibits discrimination against any "*qualified individual with a disability*."

#### New Construction and Alterations

*Buildings that are constructed or altered by, on behalf of, or for the use of a public entity shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities.* (Section 35.151 of Title II)

#### Existing Facilities

*Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible.* ("Structural changes" include all physical changes to a facility [28 CFR Part 35, Section 35.150, Title II of the ADA Section-by-Section Analysis].)

When alterations affect access to a primary function of a facility, the entity shall also make alterations to the path of travel to the area and bathrooms, public telephones, and drinking fountains serving the altered area.

#### Programs and Services

*....each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities.*  
(Title II, Section 35.150)

This includes, but is not limited to, the provision of auxiliary aids and services, including services and devices for effective communication where necessary to afford persons with disabilities an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by a public entity.

## Signs

A public entity must ensure that persons with impaired vision and hearing can obtain information regarding the location of accessible services, activities, and facilities. Signs must be provided at all inaccessible entrances to each facility directing users to an accessible entrance or to a location where information can be obtained about accessible facilities. The international symbol for accessibility must be used at each accessible entrance to a facility. (Title II, Section 35.163)

## **Clean Water Act**

Carolina Beach State Park's sensitive wetland areas receive protection from Section 404 of the federal Clean Water Act. The Act prohibits the discharge of dredge or fill materials into waters, including wetlands, without a permit from the U.S. Army Corps of Engineers. Activities in wetlands for which permits may be required include but are not limited to: placement of fill material; ditching activities; land clearing involving relocation of soil material; land leveling; most road construction; and dam construction (33 USC 1344). The Division will avoid undertaking construction located in wetlands unless there is no practical alternative and all practical measures are taken to minimize harm to the wetland.

## **Snow's Cut Lease**

The State of North Carolina has leased 35.34 acres at Snow's Cut from the U.S. Department of the Army, Corps of Engineers, for public park and recreational purposes. The N.C. Division of Parks and Recreation manages 31.4 acres of the leased land for Carolina Beach State Park. The 31.4 acres runs along the south side of Snow's Cut between the Cape Fear River and State Road 1534. The Town of Carolina Beach and the N.C. Wildlife Resources Commission (WRC) manage the remainder of the leased property. The WRC provides boating access, and the town manages a walking/hiking trail.

The leased 31.4 acres is an important component of Carolina Beach State Park's land base (Figure IX-1). Part of the marina basin and picnic area, and a small portion of the campground lie on the leased property, as does one of the park's trails. The property also provides park visitors with scenic views of Snow's Cut and boat traffic through the waterway.

The current lease (#DACW 21-1-01-5411) runs for a term of 25 years from August 1, 2001 through July 31, 2026. The land must be used for public park and recreational purposes. The lease includes numerous provisions with which the Division must comply, including: compliance with applicable federal, state and local laws and regulations; fees; insurance; health and safety; compliance with development and management plans; and environmental protection.

## **MOTSU Lease**

The State of North Carolina leases approximately 235 acres (Figure IX-1) from the U.S. Department of the Army (lease #DACA21-3-97-1405). The land is part of the buffer lands for the Military

Ocean Terminal, Sunny Point (MOTSU), located across the Cape Fear River in Brunswick County. The land has been managed as a part of Carolina Beach State Park since 1976 on leases that run for five-year terms. On April 15, 2003, the Division of Parks and Recreation requested that MOTSU renew for another five years the lease of the 235 acres plus an additional 75 acres containing Scout Pond, a total of 310 acres. The Division would like to add at least 75 additional acres to the leased area. Ideally, all the MOTSU buffer lands along Dow Road between the towns of Carolina Beach and Kure Beach should be added to the park. These lands were once leased as a part of the park, but the leased area was reduced years ago because of a lack of staff to adequately manage the property. Staff is now adequate to manage this additional land.

The MOTSU leased lands contain some of the unique natural features in the park, including Gum Pond and Dry Pond and portions of Grass Pond and Cypress Pond. Of the 24 rare plant and animal species found in the park, 18 are found within the leased lands. Most of these rare species are associated with the wet natural communities and the transition zones to the uplands. Several high quality natural communities found here are not well represented in other state park system units. The MOTSU leased area also includes the sand dune Sugarloaf, an important geologic and historic feature. Over one-half of the park's trails run through the property, and much of the park's interpretive programming is tied to these wetlands, natural communities and dune features. The park's two primitive campsites are also located on the property. The continuation of the lease for the MOTSU lands is critical to the operation of Carolina Beach State Park.

Like the Snow's Cut lease, there are numerous conditions of the lease with which the Division must comply. The lease specifically prohibits overnight camping on the property that includes use of a motor home or trailer. Semi-annual inspections are required, and provisions for evacuation are included.

12/06